# Law Enforcement Digest

June 2000

## HONOR ROLL

**516th Session, Basic Law Enforcement Academy, Spokane – Spokane Police Academy**
**January 28th through April 18th, 2000**

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|---|---|
| Highest Achievement in Scholarship: | Gavin H. Pratt - Oroville City Police Department |
| Highest Achievement in Night Mock Scenes: | Jason J. Berthon-Koch - Central Washington University Police Department |
| Outstanding Officer: | Robert A. Cepeda - Medical Lake Police Department |
| Highest Achievement in Pistol Marksmanship: | Nathan L. Hahn - Washington State University Police Department |
| Best Overall Firearms: | Eric A. Gural - Washington State Gambling Commission |
| Best Tactical Firearms: | Amy K. Ross - Spokane Police Department |

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## JUNE LED TABLE OF CONTENTS

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## LEGISLATIVE UPDATE -- PART TWO

*LED Introductory Notes: This is Part Two of what we expect to be a three-part update of 2000 Washington State legislative enactments of special interest to law enforcement. We have included in Parts One and Two all of the significant enactments of general interest to law enforcement that we could identify. However, consistent with our past practice, our updates for the most part do not digest legislation in the subject areas of sentencing, civil consumer protection, retirement, collective bargaining, civil service, tax, budget, and worker benefits. Part Two includes a cumulative index of enactments covered in the first two parts. Part Three will cover legislation of interest not covered in Parts One and Two, if any, as well as revisiting select enactments. The text of the 2000 legislation is available on the Internet at the following address -- [http://www.leg.wa.gov]. Look under "bill info," "house bill information/senate bill information," and use bill numbers to access information.*

*We have tried to incorporate RCW references in most of our entries, but where new sections or chapters are created by the legislation, the State Code Reviser must assign the appropriate code numbers. That process will likely not be completed until early fall of this year. Finally, as always, we remind our readers that any legal interpretations that we express in the LED do not necessarily reflect the views of the Attorney General's Office or of the Criminal Justice Training Commission.*

**REDUCING FILING FEE FOR CIVIL ANTI-HARASSMENT PETITION TO $41**
CHAPTER 9 (HB 2328) Effective Date: June 8, 2000

Amends RCW 36.18.020 to reduce the filing fee for a civil anti-harassment petition under RCW 10.14.040 from $110 to $41.

**DEVELOPING WORKPLACE SAFETY PLANS AT STATE MENTAL HOSPITALS**
CHAPTER 22 (SHB 2900) Effective Date: June 8, 2000

Amends RCW 72.23.010 and adds new sections to chapter 72.23 RCW. The Senate Bill Report summarizes the bill as follows:

> Each state hospital must conduct a security and safety assessment to identify existing or potential hazards in the workplace. Using the assessment, each state hospital must develop a plan by November 1, 2000, to reasonably prevent and protect employees from violence at the hospital. The state hospitals must implement the plan by January 1, 2001. Each state hospital must provide workplace violence prevention training to affected employees by July 1, 2001, and regularly thereafter. The employee must have the workplace violence training in addition to other ongoing training and prior to assignment to a patient unit. Each state hospital must keep records of any violent act against an employee or patient beginning no later that July 1, 2000, and maintain the records for five years. Failure to comply subjects the hospital to citation under state labor laws. The Department of Social and Health Services must provide an interim report July 1, 2000, a copy of the completed plan November 1, 2000, and report annually on its progress to reduce workplace violence in the state hospitals.

"State hospital" is defined at RCW 72.23.010 as "any hospital, including a child study and treatment center, operated and maintained by the state of Washington for the care of the mentally ill." (Emphasis added)

**REQUIRING THAT COURTS NOTIFY SCHOOLS OF JUVENILE STUDENTS' FIREARMS CONVICTIONS, ADJUDICATIONS AND DIVERSIONS**
CHAPTER 27 (SB 6202) Effective Date: June 8, 2000

Amends RCW 13.04.155 to add firearms crimes (under chapter 9.41 RCW) to the list of crimes on which courts must advise K-12 school principals of convictions, adjudications or diversion agreements. No change is made in the other provisions of RCW 13.04.155 which specify what the school principal is to do with this information.

**ALLOWING GAMBLING COMMISSION TO GET CRIMINAL HISTORY RECORD INFORMATION**
CHAPTER 46 (HB 2352) Effective Date: June 8, 2000

Amends RCW 9.46.210 by adding a subsection (4) reading as follows:

> (4) Criminal history record information that includes nonconviction data, as defined in RCW 10.97.030, may be disseminated by a criminal justice agency to the Washington state gambling commission for any purpose associated with the investigation for suitability for involvement in gambling activities authorized under this chapter. The Washington state gambling commission shall only disseminate nonconviction data obtained under this section to criminal justice agencies.

**REVIEWING DOMESTIC VIOLENCE FATALITIES**
CHAPTER 50 (E2SHB 2588) Effective Date: June 8, 2000

Adds new chapter to Title 43 RCW to create and coordinate domestic violence review panels through DSHS. The review panels will have access to information and records regarding DV perpetrators, among other things, but must maintain the confidentiality of that information.

**REQUIRING THAT JUDICIAL INFORMATION SYSTEM GET PROTECTION ORDERS ISSUED UNDER RCW 74.34.130 RE ABUSE OF VULNERABLE ADULTS**
CHAPTER 51 (HB 2595) Effective Date: June 8, 2000

Amends RCW 26.50.160 to provide that orders for protection issued under chapter 74.34 RCW (dealing with "abuse of vulnerable adults") are to be entered into the judicial information system along with other protection orders, restraining orders, and no-contact orders.

**CLARIFYING WHEN DUI DEFENDANTS MUST APPEAR IN COURT**
CHAPTER 52 (HB 2612) Effective Date: June 8, 2000

Amends RCW 46.61.50571 to clarify when a defendant must appear in court on a DUI charge. The Senate Bill Report summarizes the amendatory act as follows:

> Language in the law requiring prompt court appearance in DUI cases is clarified. Every person charged with DUI who is served with a citation or complaint at the time of arrest must appear before a judicial officer within one judicial day after the arrest. Every person who is charged with DUI but is not served with a citation or complaint at the time of the incident must appear within 14 days after the next day on which court is in session following issuance of the citation.

**CLARIFYING THAT DOC MAY TRANSFER PRISONERS OUT OF STATE OF WASHINGTON**
CHAPTER 62 (ESSB 6761) Effective Date: March 22, 2000

Adds new sections and amends sections in chapter 72.68 RCW to clarify that DOC may transfer prisoners out of state when that is in the best interest of the state or the offender. Victims are to be notified of such transfers in certain specified circumstances.

**MAKING HIT-AND-RUN WHERE DEATH OCCURS A CLASS B FELONY**
CHAPTER 66 (SSB 6071) Effective Date: June 8, 2000

Amends RCW 46.52.020 to make it a class B felony to commit hit-and-run in the case of an accident resulting in death. Adult and juvenile sentencing provisions are amended to account for the increased classification of this variation of hit-and-run.

**EXTENDING DURATION OF JUVENILE COURT POWER TO ENFORCE ASSESSMENTS**
CHAPTER 71 (SSB 6244) Effective Date: March 22, 2000

Amends chapter 13.40 RCW by adding a new section reading as follows:

> If a respondent is ordered to pay a penalty assessment pursuant to a dispositional order entered under this chapter, he or she shall remain under the court's jurisdiction for a maximum term of ten years after the respondent's eighteenth birthday. Prior to the expiration of the ten-year period, the juvenile court may extend the judgment for the payment of a penalty assessment for an additional ten years.

**CLARIFYING MENTAL HEALTH COMPETENCY PROCEDURES**
CHAPTER 74 (SSB 6375) Effective Date: June 8, 2000

Amends various sections of chapters 10.77 and 71.05 RCW to clarify timelines, information-sharing authority, and evidentiary standards in mental health competency proceedings.

**CLARIFYING BICYCLISTS' RIGHTS AND DUTIES IN CROSSWALKS AND ON SIDEWALKS; GIVING POLICE POWER TO IMPOUND BIKES OF INTOXICATED BICYCLISTS**
CHAPTER 85 (HB 2333) Effective Date: June 8, 2000

Amends RCW 46.61.235, 46.61.261, and 46.61.755 to codify the ruling of the Washington Supreme Court in Pudmaroff v. Allen, 138 Wn.2d 55 (1999) **Jan 2000 LED:05**, and to further clarify the rights and duties of bicyclists. Bicyclists in crosswalks and on sidewalks have all of the rights, duties and right-of-way of pedestrians. But bicyclists must yield the right-of-way to pedestrians when they are in crosswalks or on sidewalks.

Also adds the following new section to chapter 46.61 RCW, giving law enforcement officers authority assist intoxicated bicyclists and to impound their bicycles:

> (1) A law enforcement officer may offer to transport a bicycle rider who appears to be under the influence of alcohol or any drug and who is walking or moving along or within the right of way of a public roadway, unless the bicycle rider is to be taken into

protective custody under RCW 70.96A.120. The law enforcement officer offering to transport an intoxicated bicycle rider under this section shall:

(a) Transport the intoxicated bicycle rider to a safe place; or

(b) Release the intoxicated bicycle rider to a competent person.

(2) The law enforcement officer shall not provide the assistance offered if the bicycle rider refuses to accept it. No suit or action may be commenced or prosecuted against the law enforcement officer, law enforcement agency, the state of Washington, or any political subdivision of the state for any act resulting from the refusal of the bicycle rider to accept this assistance.

(3) The law enforcement officer may impound the bicycle operated by an intoxicated bicycle rider if the officer determines that impoundment is necessary to reduce a threat to public safety, and there are no reasonable alternatives to impoundment. The bicyclist will be given a written notice of when and where the impounded bicycle may be reclaimed. The bicycle may be reclaimed by the bicycle rider when the bicycle rider no longer appears to be intoxicated, or by an individual who can establish ownership of the bicycle. The bicycle must be returned without payment of a fee. If the bicycle is not reclaimed within thirty days, it will be subject to sale or disposal consistent with agency procedures.

**EXPANDING CRIMINAL HISTORY BACKGROUND CHECKING TO COVER THOSE IN POSITIONS DEALING WITH VULNERABLE ADULTS**

CHAPTER 87 (2SHB 2637) Effective Date: June 8, 2000

Amends sections of chapters 42.42, 42.20A, 74.39A, and 74.34 RCW to expand the existing requirement for criminal history background checks for workers dealing with children and individuals with mental illness and developmental disability to cover workers dealing with vulnerable adults.

**BRINGING WASHINGTON'S SEX OFFENDER REGISTRATION LAW INTO COMPLIANCE WITH FEDERAL LAW REQUIREMENTS**

CHAPTER 91 (EHB 2424) Effective Date: June 8, 2000

Amends RCW 9A.44.130, .135, and .140, as well as RCW 70.48.470. The Senate Bill Report describes the background and content of the act as follows:

Background: Federal law places minimum requirements on sex offender registration programs. Ten percent of state Byrne Grant funding for law enforcement programs is contingent on compliance with the federal requirements. The federal government has notified Washington that the state is not in compliance in some areas of our registration law.

Summary of Amended Bill: The chief law enforcement officer in each jurisdiction is required to verify the addresses of sexually violent predators who are not in full confinement every ninety days. The courts and the jail administrator or Department of Corrections who has custody of the sex offender must notify offenders who are required to register that he or she must register in the new state within 10 days if he or she moves to a new state or works, carries on a vocation, or goes to school in a state other than the state of residence.

After the effective date of the act, sex offenders who have been determined to be sexually violent predators or who commit class A sex offenses with forcible compulsion are required to register for life and the court may not relieve them of the duty to register. Upon a petition, the court may exempt them from community notification provisions to which they may be subject after they have spent 15 years in the community with no offense.

**REQUIRING DNA TESTING OF EVIDENCE FOR PERSONS SENTENCED TO DEATH OR LIFE IMPRISONMENT; ALLOWING THE FILING OF CRIMINAL CHARGES BASED ON DNA**

CHAPTER 94 (SHB 2491) Effective Date: June 8, 2000

Amends RCW 10.37.050 (which deals with the filing of criminal charges) and adds a new section to chapter 10.73 RCW (which deals with criminal appeals). The Senate Bill Report describes the changes in law as follows:

> County prosecutors must consider post-conviction DNA testing requests by offenders sentenced to death or life imprisonment and determine whether testing would prove innocence on a more probable than not basis. Then, if the evidence still exists, [the prosecutors are to] submit it to the state crime lab for preliminary testing.
>
> If a prosecutor denies the request, the offender has 30 days to appeal to the state Attorney General.
>
> The Office of Public Defense must provide a report of the results of the more formalized DNA testing process established by the bill. The report must also provide an estimate of the number of persons convicted of crimes where DNA evidence was not admitted because the court ruled that DNA testing did not meet acceptable scientific standards or where DNA testing technology was not sufficiently developed to test the DNA evidence in the case. The report must be prepared by December 1, 2001.
>
> The statute of limitations is tolled in cases where a charge has been filed against a person's DNA, even though the person's name is unknown.

**CLARIFYING THAT "MOTOR HOMES" MAY BE UP TO 46 FEET IN LENGTH**
CHAPTER 102 (SHB 2766) Effective Date: June 8, 2000

Amends RCW 46.44.030 to add "motor homes" to the list of vehicles which may be up to 46 feet in length.

**MERGING FISH & WILDLIFE LAWS - TITLE 75 RCW PROVISIONS BECOME PART OF TITLE 77**
CHAPTER 107 (ESHB 2078) Effective Date: June 8, 2000

Title 75 RCW is merged into Title 77's laws relating to fish and wildlife. Various provisions are clarified. Provisions relating to hunting of old world rats and mice are revised to reflect a taxonomic reclassification.

**ALLOWING DEFERRED FINDINGS IN TRAFFIC INFRACTION CASES**
CHAPTER 110 (SHB 2776) Effective Date: June 8, 2000

Amends RCW 46.63.070 as follows to give courts limited authority to defer findings in infraction cases:

> (5) (a) In hearings conducted pursuant to subsections (3) and (4) of this section, the court may defer findings, or in a hearing to explain mitigating circumstances may defer entry of its order, for up to one year and impose conditions upon the defendant the court deems appropriate. Upon deferring findings, the court may assess costs as the court deems appropriate for administrative processing. If at the end of the deferral period the defendant has met all conditions and has not been determined to have committed another traffic infraction, the court may dismiss the infraction.
>
> (b) A person may not receive more than one deferral within a seven-year period for traffic infractions for moving violations and more than one deferral within a seven-year period for traffic infractions for nonmoving violations.

**ESTABLISHING PILOT PROGRAM FOR STATEWIDE PROCESSING OF ARREST WARRANTS**
CHAPTER 111 (SHB 2799) Effective Date: June 8, 2000

The Senate Bill Report summarizes as follows this enactment of a pilot program for statewide processing of arrest warrants:

The Office of the Administrator for the Courts (OAC) must establish a pilot program for the statewide processing of warrants issued by courts of limited jurisdiction. The OAC must establish procedures and criteria for courts of limited jurisdiction to enter into agreements with other courts of limited jurisdiction in the state to process each other's warrants when the defendant is within the processing court's jurisdiction. The OAC must establish a formula for allocating, between the court that processed the warrant and the court that issued the warrant, any moneys collected and costs associated with the processing of warrants.

The processing of warrants pilot program is required to report back to the Legislature by June 1, 2003, on the effectiveness and costs of the program.

**ESTABLISHING INTERMEDIATE DRIVERS' LICENSES**
CHAPTER 115 (ESSB 6264) Effective Date: July 1, 2001

Amends provisions in, and adds provisions to, Titles 46 and 28A RCW to establish "intermediate drivers' licenses." The Senate Bill Report summarizes as follows the new scheme, which is to take effect on July 1, 2001:

The Legislature recognizes the need to develop a graduated driver's licensing system. An intermediate driver's license is established.

Intermediate License Requirements: An applicant for an intermediate driver's license must have possessed a learner's permit for six months, passed a road test, passed a driver's education course, and certified to DOL that the applicant has at least 50 hours of supervised driving experience and that ten of those hours were at night.

Intermediate License Restrictions: For the first six months after issuance of an intermediate license, the holder of the license may not have any passengers in the car under the age of 20, who are not members of the holder's immediate family. After the first six months, the holder may not have more than three passengers in the car under the age of 20, who are not members of the holder's immediate family.

The holder of an intermediate driver's license may not operate a vehicle between the hours of 12 a.m. and 5 a.m. except when the holder is accompanied by a parent or guardian, the holder is driving between home and work, the holder is driving between home and a school event, the holder is driving for employment purposes, or the holder is moving a vehicle for agricultural purposes. These restrictions do not apply when there is an emergency or the driver has written permission from the parent.

Intermediate License Penalties: The first time a person issued an intermediate driver's license is convicted of or found to have committed a traffic offense, DOL must mail a letter to the person's parent or guardian indicating the potential future penalties. On a second conviction or finding, DOL must suspend the intermediate license for six months, and on a third conviction or finding, DOL must suspend the intermediate license until the person turns 18. Enforcement of intermediate violations may only be accomplished as a secondary action.

DOL must issue an instruction permit and an intermediate license in distinctive forms. A driver's license issued to a person under the age of 18 is an intermediate license subject to the restrictions accompanying intermediate licenses.

**RESPONDING TO "RACIAL PROFILING" CONCERNS**
CHAPTER 118 (E2SSB 6683) Effective Date: March 24, 2000

The Senate Bill Report summarizes this act as follows:

Beginning May 1, 2001, the Washington State Patrol must collect data on all traffic stops. The data collected includes total number of stops, reason for each stop, race or ethnicity, age, and gender of individuals stopped, whether there was a search, and whether there was an arrest or citations issued. A report on this data must be made to the Legislature by December 1, 2000.

The State Patrol must cooperate with the Washington Association of Sheriffs and Police Chiefs to develop further criteria for use and evaluation of racial profiling data and training for officers. A report must be made to the Legislature by December 1, 2000, concerning voluntary cooperation by local law enforcement agencies.

**UPDATING REQUIREMENTS FOR CHILD PASSENGER RESTRAINT SYSTEMS**
CHAPTER 190 (ESHB 2675) Effective Date: July 1, 2002

The Senate Bill Report summarizes as follows the changes, effective July 1, 2002, made to provisions in Title 46 RCW relating to child passenger restraint systems:

Children under the age of 16 years must be restrained in a vehicle according to the following schedule:

One year of age or under or 20 pounds - a rear facing infant seat.

Between one year of age or over 20 pounds and four years of age, or under 40 pounds - a forward facing child safety seat.

Between four years of age or over 40 pounds and eight years of age or under 80 pounds - a booster seat.

Eight years of age and older - a seatbelt.

The penalty for violations of the above age/weight based child seat requirements is a traffic infraction. If the person found to be in violation provides proof that he or she purchased an approved child passenger restraint system within seven days of receiving the citation, the court shall dismiss the notice of infraction.

For vehicles equipped with passenger-side air bags and the air bag system is activated, children under the age of eight or under 80 pounds must be transported in the back seat of the vehicle, when practical to do so. The enforcement of child restraint usage is made a primary action, but seatbelt enforcement is left as a secondary action.

Law enforcement may do a visual inspection of the child restraint system in use to ensure that the system provides the maximum safety and security to each individual child. The enforcement requirement must be applied in conjunction with the specific weight/age criteria.

The Washington Traffic Safety Commission must conduct an educational campaign on the use of child car seats, booster seats, and seatbelt use, based on the new provisions contained in this bill.

**CREATING A STATE MEDAL OF VALOR FOR PERSONS WHO ARE NOT PROFESSIONAL RESCUERS**
CHAPTER 224 (SSB 5408) Effective Date: June 8, 2000

Adds a new chapter to Title 1 RCW establishing a state medal of valor for those who are not professional rescuers. The Senate Bill Report summarizes the act as follows:

The decoration of the state Medal of Valor is established. The medal may be awarded by the Governor, in the name of the state, to any person who saved, or attempted to save,

the life of another at the risk of serious injury or death to himself or herself, upon the selection of the Governor's State Medal of Valor Committee.

A State Medal of Valor Committee is created for selecting honorees for the award of the state Medal of Valor. The committee membership consists of the Governor, President of the Senate, Speaker of the House of Representatives, and the Chief Justice of the Supreme Court, or their designees. The Secretary of State serves as a nonvoting ex-officio member and serves as the secretary to the committee. Any individual may nominate any resident of this state for any act of valor.

The award is presented to the recipient only during a joint session of both houses of the Legislature. The state Medal of Valor may be awarded posthumously. The medal cannot be awarded to those acting as a result of service given by any branch of law enforcement, fire fighting, rescue, or other hazardous profession where the individual is employed by a government entity within the state of Washington.

**AUTHORIZING LIMITED COUGAR HUNTING WITH AID OF DOGS**
CHAPTER 248 (ESSB 5001) Effective Date: March 31, 2000

The Senate Bill Report summarizes as follows this act authorizing limited cougar hunting:

The provision of Initiative 655 that prohibits the hunting of cougar with dogs is repealed. The Fish and Wildlife Commission shall allow cougar hunting with dogs only if hunting is conducted within game management units, no other practical alternative exists, specific cougar population control or public safety needs must be addressed, the department adopts rules regulating cougar hunting with dogs, and confirmed cougar/human safety incidents or depredations have occurred.

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## YEAR 2000 WASHINGTON STATE LEGISLATIVE ENACTMENTS DIGESTED IN MAY LED

| SUBJECT | CHAPTER | MAY PAGE # |
|---|---|---|
| REQUIRING STATEWIDE JAIL BOOKING AND REPORTING DATABASE TO BE KEPT BY WASPC | 3 | 2 |
| ADDRESSING SEVERAL SPECIFIED CRIMINAL NEGLIGENCE SITUATIONS IN "CRIMINAL MISTREATMENT IN THE 3RD DEGREE" | 76 | 3 |
| MAKING USE OF A PERSON'S IDENTIFICATION INFORMATION TO SOLICIT UNDESIRED MAIL WITH IMPROPER INTENT CRIMINALLY, CIVILLY ACTIONABLE | 77 | 3 |
| EXPANDING MANDATORY ARREST FOR VIOLATIONS OF DOMESTIC VIOLENCE ORDERS TO COVER DISTANCE RESTRICTIONS; MAKING OTHER DV LAW MODIFICATIONS | 119 | 4 |
| ENHANCING PUNISHMENT FOR METH MANUFACTURING WITH CHILDREN PRESENT | 132 | 5 |
| ADDRESSING RURAL DUMPING OF GARBAGE, JUNK VEHICLES | 154 | 5 |
| PROVIDING NARROW AUTHORITY FOR AUDIO-VIDEO RECORDING FOR POLICE VEHICLES | 195 | 5 |
| CRIMINALIZING POSSESSION OF ANHYDROUS AMMONIA | 225 | 6 |
| REVERSING 1999 VEHICLE, VESSEL, AND AIRCRAFT LICENSE FRAUD CHANGES; GOING BACK TO PRE-1999 STATUS QUO FOR CRIMINAL MV LICENSE OFFENSE | 229 | 7 |

## YEAR 2000 WASHINGTON STATE LEGISLATIVE ENACTMENTS DIGESTED IN JUNE LED

| SUBJECT | CHAPTER | JUNE PAGE # |
|---|---|---|
| REDUCING FILING FEE FOR CIVIL ANTI-HARASSMENT PETITION TO $41 | 9 | 2 |
| DEVELOPING WORKPLACE SAFETY PLANS AT STATE MENTAL HOSPITALS | 22 | 2 |
| REQUIRING THAT COURTS NOTIFY SCHOOLS OF JUVENILE STUDENTS' FIREARMS CONVICTIONS, ADJUDICATIONS AND DIVERSIONS | 27 | 3 |
| ALLOWING GAMBLING COMMISSION TO GET CRIMINAL HISTORY RECORD INFORMATION | 46 | 3 |
| REVIEWING DOMESTIC VIOLENCE FATALITIES | 50 | 3 |
| REQUIRING THAT JUDICIAL INFORMATION SYSTEM GET PROTECTION ORDERS ISSUED UNDER RCW 74.34.130 RE ABUSE OF VULNERABLE ADULTS | 51 | 3 |
| CLARIFYING WHEN DUI DEFENDANTS MUST APPEAR IN COURT | 52 | 4 |
| CLARIFYING THAT DOC MAY TRANSFER PRISONERS OUT OF STATE OF WASHINGTON | 62 | 4 |
| MAKING HIT-AND-RUN WHERE DEATH OCCURS A CLASS B FELONY | 66 | 4 |

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## REVISITING FEDERAL DV RESTRAINING ORDER RESTRICTIONS & GUNS

**LED** INTRODUCTORY NOTE: Some confusion has apparently developed among Washington law enforcement agencies regarding federal gun law restrictions on delivery, receipt, ownership and possession of firearms by persons who are subject to court orders protecting person's in domestic relationships. Some Washington agency personnel have apparently assumed that the federal restriction applies only if the court order expressly addresses firearms. That is not the case, as the federal restriction is much broader. Set forth below in italics is an excerpt from our July 97 **LED** article on this subject:

### *1994 FEDERAL GUN LAW AMENDMENTS -- RESTRAINING ORDER RESTRICTIONS*

*In the December 1996 **LED** and the January 1997 **LED**, we addressed the then-recently-adopted restrictions on delivery, receipt, ownership or possession under 1996 amendments to the federal firearms laws for a person convicted at any time in a state or federal court of a "misdemeanor crime of domestic violence." An additional restriction under federal law, not addressed in the December and January **LED**'s, or any other **LED**, is the bar adopted in 1994 on persons who are subject to certain court orders protecting persons in domestic relationships.*

*The 1994 amendments to federal firearms laws barred firearms delivery, receipt, ownership, or possession with respect to any person who:*

> *[I]s subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such an intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that --*
>
> *(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and*
>
> *(B)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or*
>
> *(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury;...*

*18 U.S.C. §§ 922(d)(8) and 922(g)(8).*

*The term "intimate partner" is defined at 18 U.S.C. § 921(a)(32) as follows:*

> *The term "intimate partner" means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.*

*The language which appears in Washington domestic violence court order forms restraining persons from "causing physical harm, bodily injury, etc." fits § 922(d)(8)(B)(ii) and § 922(g)(8)(ii). Thus, a person subject to a domestic violence or harassment order obtained by an "intimate partner" (as defined by federal law) with such restraining language would be subject to the federal firearms restriction while the order was in effect.*

*However, it must be noted that, under federal law, as set forth above, the firearms restriction* ***does not apply to "temporary orders" for protection which are issued ex parte, i.e., without notice to the respondent****. It should also be noted that it appears that the restraining order prohibition of federal law* ***does not apply to law enforcement officers and military personnel carrying firearms in the course of their duties****. (To help to avoid disputes, officers who are respondents in such court actions may want to seek a specific authorization to carry a firearm in the course of their duties.) The 1994 federal gun law restriction relating to court order restraints does apply to such persons in most off-duty circumstances, however.*

*NOTE ALSO THAT THE 1996 CONGRESS TOOK A DIFFERENT APPROACH TO THIS ISSUE WHEN IT ADOPTED THE PROHIBITION RELATED TO MISDEMEANOR CONVICTIONS FOR CRIMES OF DOMESTIC VIOLENCE. THE 1996 BAR FOR THOSE WITH MISDEMEANOR DV CONVICTIONS DOES APPLY TO LAW ENFORCEMENT AND MILITARY PERSONNEL WHETHER THEY ARE ON OR OFF DUTY. SEE THE DISCUSSIONS OF THE 1996 FEDERAL GUN LAW CHANGES IN THE DECEMBER 1996 AND JANUARY 1997* ***LED****'S.*

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## UNITED STATES SUPREME COURT

**OFFICER'S MANIPULATION OF SOFT BAG WAS "SEARCH" WITHOUT JUSTIFICATION**

Bond v. U.S., 120 C. St. 1462 (2000)

Facts: (Excerpted from U.S. Supreme Court opinion)

> Steven Dewayne Bond was a passenger on a Greyhound bus that left California bound for Little Rock, Arkansas. The bus stopped, as it was required to do, at the permanent Border Patrol checkpoint in Sierra Blanca, Texas. Border Patrol Agent Cesar Cantu boarded the bus to check the immigration status of its passengers. After reaching the back of the bus, having satisfied himself that the passengers were lawfully in the United States, Agent Cantu began walking toward the front. Along the way, he squeezed the soft luggage which passengers had placed in the overhead storage space above the seats.
>
> Bond was seated four or five rows from the back of the bus. As Agent Cantu inspected the luggage in the compartment above Bond's seat, he squeezed a green canvas bag and noticed that it contained a "brick-like" object. Bond

admitted that the bag was his and agreed to allow Agent Cantu to open it. Upon opening the bag, Agent Cantu discovered a "brick" of methamphetamine. The brick had been wrapped in duct tape until it was oval-shaped and then rolled in a pair of pants.

*Court's Footnote: The Government has not argued here that petitioner's consent to Agent Cantu's opening the bag is a basis for admitting the evidence.*

Proceedings: Bond was indicted on federal drug charges. He moved unsuccessfully to suppress the evidence, arguing that Agent Cantu had illegally searched his bag by squeezing it. The U.S. District Court found Bond guilty, and the U.S. Court of Appeals for the Fifth Circuit affirmed, holding that no search had occurred.

ISSUE AND RULING: Did Bond have a reasonable expectation that his soft carry-on bag placed immediately overhead in a luggage rack would not be squeezed in an exploratory manner by strangers? (ANSWER: Yes, rules a 7-2 majority) Result: Reversal of federal conviction of Bond.

ANALYSIS BY MAJORITY: (Excerpted from U.S. Supreme Court opinion)

The Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...." A traveler's personal luggage is clearly an "effect" protected by the Amendment. Indeed, it is undisputed here that petitioner possessed a privacy interest in his bag.

But the Government asserts that by exposing his bag to the public, Bond lost a reasonable expectation that his bag would not be physically manipulated. The Government relies on our decisions in California v. Ciraolo, 476 U.S. 207 (1986) and Florida v. Riley, 488 U.S. 445 (1989), for the proposition that matters open to public observation are not protected by the Fourth Amendment. In Ciraolo, we held that police observation of a backyard from a plane flying at an altitude of 1,000 feet did not violate a reasonable expectation of privacy. Similarly, in Riley, we relied on Ciraolo to hold that police observation of a greenhouse in a home's curtilage from a helicopter passing at an altitude of 400 feet did not violate the Fourth Amendment. We reasoned that the property was "not necessarily protected from inspection that involves no physical invasion," and determined that because any member of the public could have lawfully observed the defendants' property by flying overhead, the defendants' expectation of privacy was "not reasonable and not one 'that society is prepared to honor.' "

But Ciraolo and Riley are different from this case because they involved only visual, as opposed to tactile, observation. Physically invasive inspection is simply more intrusive than purely visual inspection. For example, in Terry v. Ohio, 392 U.S. 1 (1968), we stated that a "careful [tactile] exploration of the outer surfaces of a person's clothing all over his or her body" is a "serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and is not to be undertaken lightly." Although Agent Cantu did not "frisk" Bond's person, he did conduct a probing tactile examination of petitioner's carry-on luggage. Obviously, Bond's bag was not part of his person. But travelers are particularly concerned about their carry-on luggage; they generally use it to transport personal items that, for whatever reason, they prefer to keep close at hand.

Here, Bond concedes that, by placing his bag in the overhead compartment, he could expect that it would be exposed to certain kinds of touching and handling. But petitioner argues that Agent Cantu's physical manipulation of his luggage "far exceeded the casual contact [petitioner] could have expected from other passengers." The Government counters that it did not.

Our Fourth Amendment analysis embraces two questions. First, we ask whether the individual, by his conduct, has exhibited an actual expectation of privacy; that is, whether he has shown that "he [sought] to preserve [something] as private." Here, petitioner sought to preserve privacy by using an opaque bag and placing that bag directly above his seat. Second, we inquire whether the individual's expectation of privacy is "one that society is prepared to recognize as reasonable." [*Court's Footnote: The parties properly agree that the subjective intent of the law enforcement officer is irrelevant in determining whether that officer's actions violate the Fourth Amendment.*] When a bus passenger places a bag in an overhead bin, he expects that other passengers or bus employees may move it for one reason or another. Thus, a bus passenger clearly expects that his bag may be handled. He does not expect that other passengers or bus employees will, as a matter of course, feel the bag in an exploratory manner. But this is exactly what the agent did here. We therefore hold that the agent's physical manipulation of Bond's bag violated the Fourth Amendment.

DISSENT: Justice Breyer dissents, joined by Justice Scalia. They argue in vain that it is not reasonable for people who place their soft luggage in an overhead luggage rack to expect strangers, including the police, not to push, pull, prod, squeeze or otherwise manipulate that luggage.

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## WASHINGTON STATE SUPREME COURT

**OPEN VIEW: LOOKING THROUGH PREEXISTING HOLE IN STORAGE UNIT WALL INTO NEIGHBORING STORAGE UNIT WAS NOT A "SEARCH"**

State v. Bobic, 140 Wn.2d 250 (2000)

Facts: (Excerpted from Washington Supreme Court opinion)

Mihai Bobic and Igor Stepchuk were charged with numerous crimes arising from a sophisticated auto theft conspiracy. Bobic, Stepchuk, or their confederates stole vehicles and stripped them of their contents and key parts. They stored the stolen car parts and other stolen goods in various commercial storage facilities. Insurance carriers subsequently sold the hulks of the cars left by the thieves at auto auctions. Bobic, Stepchuk, or their confederates then purchased the hulks at those auto auctions, giving them clear title to the vehicles. They then reassembled the vehicles with the stolen car parts and sold them.

Detective Kelly Quirin became suspicious about certain auto thefts and his investigation uncovered a possible connection between auto thefts and storage facilities. On March 1, 1994, Quirin obtained and executed a search warrant to examine certain units at a Shurgard Storage facility. After searching the units in accordance with the warrant, the facility's manager told Quirin that one of the

> units at his facility, unit E-71, might be connected with stolen vehicles. This unit was being rented by Almaz Sebesebie. On March 8, Quirin went to the storage facility with another officer and asked to look at unit E-71, which was locked. The manager let the officers into an unrented, unlocked storage unit next door to unit E- 71. Upon entering the unit, the officers saw a preexisting hole, 'maybe big enough to stick your pinky finger in or a little bigger,' about four feet off the ground. (The walls of the units go up to the ceiling.) Quirin looked through the hole, and without aid of a flashlight was able to see items in unit E- 71. Based on this information, Quirin obtained a search warrant for unit E- 71 and recovered stolen goods.

Proceedings: Defendant Bobic was linked to the stolen property that the officer had observed through the hole. He and alleged co-conspirator Stepchuk were charged with multiple crimes on multiple counts. Prior to trial, Bobic moved unsuccessfully to suppress the evidence seized from the storage locker. Bobic and Stepchuk were subsequently convicted on multiple counts on multiple criminal charges.

ISSUE AND RULING: When an officer is admitted legally into one commercial storage unit and views items of personal property in a neighboring unit, acting without a search warrant, and looking with his unaided vision through a preexisting hole in the neighboring unit, are the items in "open view" such that no "search" is deemed to have occurred? (ANSWER: Yes, this was a non-search, "open view" observation.)

Result: Affirmance of denial of defendants' suppression motion by the King County Superior Court in relation to the officer's viewing of the storage unit; affirmance of most of the multiple convictions of Mihai Bobic and Igor Stepchuk (note, however, that two conspiracy convictions are dismissed on "double jeopardy" grounds not addressed in this LED entry).

ANALYSIS: (Excerpted from Washington Supreme Court opinion)

> Detective Quirin's observations do not constitute a search because the objects under observation were in 'open view.' Under the open view doctrine, 'when a law enforcement officer is able to detect something by utilization of one or more of his senses while lawfully present at the vantage point where those senses are used, that detection does not constitute a 'search'[.]' [State v. Rose, 128 Wn.2d 388 (1996) **March 96 LED:02 -- *Rose upheld an officer's use of a flashlight to aid his vision as he walked onto a residential porch and shined his flashlight beam through an open-curtained window. -- LED Ed.***] Here, the detective was lawfully inside the adjoining unit because the manager had given him permission to enter. Furthermore, it appears from the record that the detective's observations were made without extraordinary or invasive means and could be seen by anyone renting the unit. [The record showed that the officer did not use] a flashlight because '[t]he hole wasn't big enough to be able to look at to have the flashlight and your eye next to it to see in.'
>
> Bobic contends the search here must nonetheless fail because it invaded a protected privacy interest and was more intrusive than the search in Rose. In Rose, the officer's search was likely more intrusive because he looked with the aid of a flashlight through a window into the defendant's residence during the evening. Here, the detective did not peer through a curtained window; he did not wait until something incriminating came into sight or hearing; and he did not attempt to create a better vantage point.

> Moreover, a commercial storage unit is not the kind of location entitled to special privacy protection. For example, a person's home is entitled to 'heightened constitutional protection' relative to other locations. We decline to determine that a commercial storage unit has any special protected status.
>
> This case is analogous to United States v. Hufford, 539 F.2d 32 (9th Cir. 1976). In that case, federal agents entered an adjacent rental garage with the renter's permission. Through a crack in the wall and a missing piece of sheetrock, the agents observed a variety of drug manufacturing paraphernalia and amphetamines. The United States Court of Appeals for the Ninth Circuit held the agents' view was permissible because the agents did not trespass on the property, they entered the stall with the renter's permission, and the contraband was in plain view. Here, the trial court properly denied Bobic's motion to suppress.

[Some citations omitted]

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## BRIEF NOTE FROM THE WASHINGTON STATE SUPREME COURT

**ALLOWING THE JUDICIARY TO DETERMINE THE AREAS OF COURTHOUSE IN WHICH WEAPONS ARE PROHIBITED IS NOT AN UNCONSTITUTIONAL DELEGATION --** In State v. Wadsworth, 139 Wn.2d 724 (2000), the Washington State Supreme Court holds that permitting the judiciary to prescribe the areas of a courthouse where weapons are prohibited is not an unconstitutional delegation of authority to the judiciary in violation of the separation of powers doctrine.

The defendant in this case was charged with violating RCW 9.41.300(1)(b), which provides:

> (1) It is unlawful for any person to enter the following places when he or she knowingly possesses or knowingly has under his or her control a weapon:
>
> . . .
>
> (b) Those areas in any building which are used in connection with court proceedings, including courtrooms, jury rooms, judge's chambers, offices and areas used to conduct court business, waiting areas, and corridors adjacent to areas used in connection with court proceedings. The restricted areas do not include common areas of ingress and egress to the building that is used in connection with court proceedings, when it is possible to protect court areas without restricting ingress and egress to the building. The restricted areas shall be the minimum necessary to fulfill the objective of this subsection (1)(b).
>
> . . .
>
> The local judicial authority shall designate and clearly mark those areas where weapons are prohibited, and shall post notices at each entrance to the building of the prohibition against weapons in the restricted areas;

The defendant challenged the provision requiring the local judicial authority to designate the areas in which weapons are prohibited, on separation of powers grounds. A 7-2 majority of the Supreme Court rejects defendant's arguments, emphasizing the inherent power of local courts to provide for courthouse security. Judge Alexander files a dissent joined by Justice Sanders.

Result: Reversal of Kitsap County Superior Court dismissal of charges of unlawful possession of a weapon in violation of RCW 9.41.300(1)(b) against Dennis L. Wadsworth.

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## WASHINGTON STATE COURT OF APPEALS

**NO "SEIZURE" OCCURRED WHERE OFFICER TOOK ID JUST LONG ENOUGH TO RECORD THE INFORMATION AND THEN CONVERSED WITH MAN WHILE CHECKING WARRANTS**

State v. Hansen, 99 Wn. App. 575 (Div. I, 2000)

Facts: (Excerpted from Court of Appeals opinion)

> On October 4, 1997, Lynnwood Police Officers Douglas Teachworth and Thomas Brooks stopped to investigate a group of individuals outside a Chevron station. The officers were aware that there had been problems at the station in the past. Teachworth and Brooks were not in uniform, but their badges and guns were visible. As the officers walked through the parking lot, they saw Michael Hansen, the defendant, who appeared to be walking toward them. When Hansen noticed the officers, he stopped and sat down on the curb.
>
> Teachworth approached Hansen and asked him if he was with people in a nearby van. Hansen indicated that he had been with them, but that he had been dropped off and was waiting for a ride. Brooks then approached Hansen as well.
>
> Teachworth asked Hansen if he had any identification, and Hansen produced an expired driver's license. Teachworth passed the license to Brooks, who wrote down Hansen's name and date of birth, and returned the license to Hansen. Brooks held Hansen's license for approximately five to 30 seconds. Teachworth continued to converse with Hansen while Brooks conducted a warrants check, which confirmed that an outstanding warrant had been issued for Hansen's arrest. The officers arrested and searched Hansen, at which time they found methamphetamine in a toiletry bag he was carrying.

Proceedings: (Excerpted from Court of Appeals opinion)

> Hansen was charged with possession of a controlled substance. Hansen moved to suppress the evidence as the product of an illegal seizure. Following a suppression hearing, the court ruled that the officers' initial contact with Hansen was consensual, and that Hansen voluntarily handed his identification to Teachworth. The court held, however, that once Teachworth handed the license to Brooks, the consensual contact turned into a detention. The court therefore suppressed the evidence as the fruit of the illegal seizure.

ISSUE AND RULING: Is it a Terry "seizure" where law enforcement officers: a) identify themselves as such to a citizen, b) ask for ID, c) immediately record the information, d) give the ID documents back to the citizen within half a minute, d) radio the information for a warrants check, and f) converse with the citizen for a few minutes? (ANSWER: No, on the totality of the circumstances, this was not a "seizure," and therefore it was not necessary that the officers justify the contact with "reasonable suspicion" of criminal activity) Result: Reversal of Snohomish County Superior Court suppression ruling; case remanded for trial.

ANALYSIS: (Excerpted from Court of Appeals opinion)

Not every encounter between an officer and an individual amounts to a seizure. A police officer has not seized an individual merely by approaching him in a public place and asking him questions, as long as the individual need not answer and may simply walk away. Moreover, police questioning relating to one's identity, or a request for identification by the police, without more, is unlikely to result in a seizure. A person is 'seized' under the Fourth Amendment only if, "in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." Whether a reasonable person would believe he was detained depends on the particular, objective facts surrounding the encounter.

In [State v. Thomas, 91 Wn. App. 195 (Div. II, 1998) **Nov 98 LED:15**] the court held that a seizure occurred when an officer, while retaining the defendant's identification, took three steps back to conduct a warrants check on his hand-held radio. Similarly, in State v. Dudas, 52 Wn. App. 832 (1988), the court determined that the defendant was seized under the Fourth Amendment when the deputy took his ID card and returned to the patrol car, thus immobilizing him. In [State v. Aranguren, 42 Wn. App. 452 (1985) **Aug 86 LED:10**] the court found that a seizure occurred when an officer took the defendants' identification documents to his vehicle to write their names down and run warrants checks on them. Finally, in [State v. Armenta, 134 Wn.2d 1 (1997) **March 98 LED:05**] our Supreme Court concluded that the defendant was seized when a police officer placed the defendant's money in his patrol car 'for safe keeping.' In each of these cases, the officer removed defendant's identification or property from defendant's presence.

Here, officers Teachworth and Brooks never removed Hansen's license from his presence. The officers held it for no more than 30 seconds while Brooks took note of Hansen's name and birth date. They did not retain Hansen's license for a lengthy period or while they conducted the warrants check. Had Teachworth alone viewed Hansen's license and returned it to him, the encounter would have maintained its consensual nature. There is no reason handing the license to another officer standing beside the first would have led a reasonable person to believe that he was not free to leave. The initial consensual encounter thus did not ripen into an unlawful detention.

We reverse the trial court's determination that the officers' conduct constituted a seizure in violation of the Fourth Amendment, and remand for trial.

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## BRIEF NOTES FROM THE WASHINGTON STATE COURT OF APPEALS

**(1) INTENT ELEMENT OF "TELEPHONE HARASSMENT" IS NOT RESTRICTED TO INTENT FORMED PRIOR TO OR AT TIME OF PLACING CALL -- IF PROSCRIBED INTENT DEVELOPS DURING PHONE CONVERSATION, THE STATUTORY "INTENT" ELEMENT IS MET** - In City of Redmond v. Burkhart, 99 Wn. App. 21 (Div. I, 2000), the Court of Appeals hold that a caller who forms the intent to harass, intimidate, torment, or embarrass at any point during a telephone conversation is subject to penalty under RCW 9.61.230, the telephone harassment statute, so long as the other elements of the statute are met.

Steve Burkhart telephoned his estranged wife and, when she refused to let him speak to their son, he became angry and threatened to kill her. The City of Redmond charged him with telephone harassment under RCW 9.61.230. The district court dismissed the charge on grounds that the statute requires the proscribed intent to have been formed at the initiation of the phone call. The King County Superior Court affirmed the dismissal of charge. The City of Redmond appealed, and now the Court of Appeals has reinstated the charge.

RCW 9.61.230 provides:

> Every person who, with intent to harass, intimidate, torment or embarrass any other person, shall make a telephone call to such other person:
>
> (1) Using any lewd, lascivious, profane, indecent, or obscene words or language, or suggesting the commission of any lewd or lascivious act; or
>
> (2) Anonymously or repeatedly or at an extremely inconvenient hour, whether or not conversation ensues; or
>
> (3) Threatening to inflict injury on the person or property of the person called or any member of his or her family or household; shall be guilty of a gross misdemeanor[.]

Focusing on the word "make," the Burkhart Court consults dictionaries and concludes that "something is continually being 'made' until the last step necessary for finality is taken and completed." In the circumstance of a phone call, the Court says, "the final step would be hanging up the telephone." Accordingly, the Burkhart Court holds that "making a telephone call is not just the initiating process of the call, but all portions of the call until its termination." If the caller forms the prohibited intent at any point in the conversation, the caller is subject to penalty under RCW 9.61.230.

Along the way, the Burkhart Court also rejects a First Amendment "free speech" challenge to application of the statute.

Result: Reversal of King County Superior Court and District Court dismissal orders; charge against Steve Burkhart under RCW 9.61.230 reinstated.

**LED EDITORIAL COMMENT: We assume that the Burkhart Court's interpretation of "make" is not broad enough to capture the recipient of a phone call who by conduct and mental state would otherwise meet the elements of the statute.**

**(2) CHALLENGE TO ADULT ENTERTAINMENT LAW IS NOT DEJA VU; INSTEAD, IT IS FRIVOLOUS** -- In Deja-Vu-Everett-Federal Way, Inc. v. City of Federal Way, 96 Wn. App. 255 (Div. I, 1999), the Court of Appeals dismisses as frivolous the lawsuit of Deja Vu, an adult entertainment business, challenging the adult entertainment ordinance of the City of Federal Way.

In Ino Ino, Inc. v. City of Bellevue, 132 Wn.2d 1 03, 937 P.2d 143 (1997), **Nov 97 LED:09**, the Washington Supreme Court upheld, against Deja Vu's challenge, a Bellevue adult entertainment ordinance which, in all relevant respects, (including a four-foot, torso-to-torso distance restriction), was identical to the Federal Way ordinance. Now the Court of Appeals holds on "collateral estoppel" (or "issue preclusion") grounds that the State Supreme Court decision in Ino Ino bars Deja Vu from re-raising a challenge to the identical ordinance of another city. The elements of collateral estoppel are: 1) the issue presented is identical to the issue presented in a prior suit; 2) there was a final judgment on the merits; 3) the party against whom collateral estoppel is asserted was a party, or in privity with a party, to the former litigation; and 4) no injustice will result from applying the doctrine. All are met in this case, the Federal Way Court holds.

In addition, the Federal Way Court rules that Deja Vu's challenge to the adult entertainment ordinance is also barred by the doctrine of "res judicata" (or "claim preclusion"). Under that doctrine, a party is barred from bringing a suit against the same party on the same grounds of recovery that could have been presented in the first action, even if those grounds were not actually raised in the first case, if the first action ended in a final judgment on the merits of the cause of action. Deja Vu had previously lost a federal court lawsuit against the City of Federal Way in Federal Way over its adult entertainment ordinance, and the Federal Way Court rules that the federal court decision in the earlier action should be given "res judicata" effect.

Finally, the Federal Way Court rules under RCW 4.84.185 and Civil Rule 11 that the lawsuit by Deja Vu was frivolous. It is rare for courts to find lawsuits frivolous, especially in cases such as this one, where the State Supreme Court's Ino Ino decision appeared to leave a glimmer of hope for an adult entertainment business to win its case by proving that a restriction - here, the four-foot, torso-to-torso restriction - inevitably will cause business failure. The Federal Way Court rules, however, that the Ino Ino decision does not actually support such an argument, and that the plaintiff, Deja Vu, should have known so.

Result: Affirmance of King County Superior Court decision dismissing Deja Vu's lawsuit; reversal of trial court decision denying attorney fees to the City of Federal Way. Status: Review denied by Washington State Supreme Court.

**LED EDITORIAL COMMENT: Maybe it's the lawyer-geek residing in the brain of one of your LED editors, but it seems ironic that "Deja Vu" would be a case name standing for the proposition that one cannot bring the same legal action over and over. The phrase "deja vu" is defined in one dictionary as "something overly or unpleasantly familiar." Maybe it was the subliminal effect of the business name. Would it have made a difference if the business were named "Epiphany" or "All-New Nudes?"**

**(3) STILL NO RIGHT TO JURY TRIAL IN JUVENILE OFFENDER ADJUDICATIONS** - In State v. J.H., 96 Wn. App. 167 (Div. I, 1999), Division One of the Court of Appeals turns down the latest attempt by criminal defense lawyers to convince the Washington courts to "judicially legislate" a jury trial right for juvenile offender adjudications.

Previously, in State v. Lawley, 91 Wn.2d 654 (1979), and in State v. Schaff, 109 Wn.2d 1 (1987), the State Supreme Court rejected constitutional challenges to RCW Title 13's scheme for trying juvenile offenders without benefit of jury trial. The constitutional attacks in Lawley and Schaff were multi-faceted, but, at bottom, the theory in each case was that the Legislature had developed a system for trying and punishing juvenile offenders that, in its punitive elements, was so much like the scheme for trying and punishing adult offenders that the jury trial right of the adult system should be incorporated in the juvenile offender scheme despite the Legislature's express decision not to do so.

The J.H. case involved the same basic challenge, though the J.H. challengers pointed to additional legislative changes since 1987, arguably making the current juvenile offender scheme even more punitive and less rehabilitative than the respective schemes at issue in Lawley and Schaff. However, the Court of Appeals holds in J.H. that the rationale of the Supreme Court in Lawley and Schaff in rejecting the challenge still stands - the procedures and penalties of the juvenile system are still more lenient and more rehabilitative than adult criminal procedures and penalties. Hence, the extraordinary constitutional remedy of judicially legislating a jury trial requirement for juvenile cases is not appropriate.

Result: Affirmance of pro-state rulings by King County Superior Court in consolidated juvenile cases.

**(4) "PERSISTENT PRISON MISBEHAVIOR" LAW HELD TO BE UNCONSTITUTIONAL DELEGATION OF LEGISLATIVE AUTHORITY** - In State v. Brown, 95 Wn. App. 952 (Div. III, 1999), the Court of Appeals holds to be an unconstitutional delegation of Legislative authority the statute on "persistent prison misbehavior," RCW 9.94.070.

Under RCW 9.94.070, adopted in 1995, a DOC prisoner is guilty of the Class C felony of "persistent prison misbehavior" if he or she commits a "serious infraction" after losing all potential earned early release time credit. DOC is given broad discretion under the statute to designate what conduct constitutes a "serious infraction." That broad discretion is fatal to the statute, the Brown Court rules. In creating a felony crime, the Legislature cannot delegate to a criminal justice agency authority to define the crime without first giving clear guidance to the delegee, i.e., DOC, as to what is to be made criminal.

Result: Affirmance of Walla Walla County Superior Court order dismissing charges of "persistent prison misbehavior" against Aaron C. Brown. Status: Review is pending in the Washington Supreme Court.

**(5) CASH BAIL MAY NOT BE FORFEITED TO COVER RESTITUTION** - In State v. Paul, 95 Wn. App. 775 (Div. III, 1999), the Court of Appeals reverses a trial court's decision to forfeit a theft defendant's cash bail to offset her restitution obligation. The Paul Court rules that, when a criminal defendant satisfies bail conditions by appearing for trial (as Ms. Paul did), bail may not be forfeited.

Result: Reversal of Okanogan County Superior Court order forfeiting Anita Verna Paul's cash bail to cover her restitution obligation (this ruling does not affect Ms. Paul's conviction of first degree theft).

**(6) NO CONVICTION ON LESSER-INCLUDED OFFENSE WHERE LIMITATIONS PERIOD HAD RUN ON THAT LESSER OFFENSE** - In State v. N.S., 98 Wn. App. 910 (Div. I, 2000), the Court of Appeals holds that a defendant cannot be convicted of a lesser-included offense upon a prosecution for a greater crime where the charge on the greater offense is filed after the statute of limitations has run on the lesser offense.

Defendant, N.S., was charged in juvenile court with rape in the third degree, a Class C felony. The trial court found that N.S. was not guilty of a completed rape, but that he was guilty of attempted rape in the third degree, a gross misdemeanor. Defendant challenged his conviction based on the statute of limitations. The rape charge was filed more than two years after N.S. had committed the crime. Because the statute of limitations for a gross misdemeanor is two years, the N.S. Court holds that N.S. could not be convicted on the attempted rape charge.

Result: Reversal of King County Juvenile Court adjudication of guilt for attempted rape in the third degree; charges dismissed.

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## INTERNET ACCESS TO COURT DECISIONS, STATUTES, AND WAC RULES

The Washington office of the Administrator for the Courts maintains a web site with appellate court information, including recent court opinions by the Court of Appeals and State Supreme Court. The address is [http:www.courts.wa.gov/]. Decisions issued in the preceding 90 days may be accessed by entering search terms, and decisions issued in the preceding 14 days may be accessed through a separate link clearly designated.

United States Supreme Court opinions can be accessed at [http://supct.law.cornell.edu/supct]. This web site contains all U.S. Supreme Court opinions issued since 1990 and most significant opinions of the Court issued before 1990.

A good source for easy access to relatively current Washington state agency administrative rules (including WSP equipment rules at Title 204 WAC) can be found at [http://slc.leg.wa.gov/WACBYTitle.htm]. Washington Legislation and other state government information can be accessed at [http://access.wa.gov] clicking on "L" and then "legislation" or other topical entries in the "Access Washington Home Page "Index."

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The Law Enforcement Digest is co-edited by Senior Counsel John Wasberg and Assistant Attorney General Shannon Inglis, both of the Washington Attorney General's Office. Questions and comments regarding the content of the **LED** should be directed to Mr. Wasberg at 206 464-6039; Fax 206 587-4290; E Mail [johnw1@atg.wa.gov]. Questions regarding the distribution list or delivery of the **LED** should be directed to Ed Johnson of the Criminal Justice Training Commission (CJTC) at (206) 835-7372; Fax (206) 439-3752; e mail [EJohnson@cjtc.state.wa.us]. **LED** editorial comment and analysis of statutes and court decisions expresses the thinking of the writers and does not necessarily reflect the views of the Office of the Attorney General or the CJTC. The **LED** is published as a research source only. The **LED** does not purport to furnish legal advice. **LED**'s from January 1992 forward are available on the Commission's Internet Home Page at:[http://www.wa.gov/cjt].